IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2049 OF 2004

WITH

CRIMINAL WRIT PETITION NO.2050 OF 2004

Shashikant Kachersingh Gandhi
and Ors. .. Petitioners

Versus

State of Maharashtra .. Respondent

Mr.A.P.Mundargi, Senior Advocate for petitioners
Mr.P.S.Hingorani, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 5th October 2006.

P.C.

. These petitions under Article 227 read with section 482 Cr.P.C. are directed against the order dated 27th February 2004 in Criminal Revision Application No.71 of 2003. These Criminal Revisional Applications were directed against the orders which were passed by the learned Magistrate refusing to recall the process issued against the petitioners upon a complaint instituted by the second respondent alleging commission of offences punishable under section 138 and 141 of N.I. Act.

2. The Revisional Court held that three grounds were raised and pressed before it. They are that the demand notice not being given within 15 days of the dishonour, therefore, condition precedent under section 138 is not satisfied. Second ground is that the complainant is not payee of the cheques. Third ground is that an injunction order is passed in winding up proceedings against company. It was in force

when the notice was given and payment could not be made because of that order. There is legal disability in making payment.

3. The learned Additional Sessions Judge considered all the three contentions and has observed that the complaint is maintainable.

4. He observed that a hyper-technical view of the matter cannot be taken and merely because the complaint is presented by power of attorney holder, the same does not make it not maintainable. In that behalf he relied upon decisions of this Court which are more particularly referred to in paras 7 and 9 of the impugned judgement.

5. Insofar as, the plea that notice was not issued within 15days of dishonour, it is pointed out by the learned Additional Sessions Judge that the cheques were returned along with memos on

29th October 1998. Although, the cheques were dated 14th October 1998, the period would commence from the date of receipt of intimation i.e. 29th October 1998 and in such circumstances, the notice sent on 7th November 1998, prima facie, would disclose that the notice prescribed in the abovementioned statutory provisions has been issued in accordance therewith. He, therefore, held that there is nothing wrong in issuing process, upon being so satisfied. The second contention was, therefore, rejected.

6. The third contention with regard to the liability coming to an end because of winding up order is concerned, the learned Judge has observed that merely because a winding up order is passed, it does not mean that the liability comes to an end.

7. It is consistent with this finding and

conclusion that he proceeded to dismiss the revision application.

8. Mr.Mundargi has urged that the complainant has not pointed out the correspondence which commences with a letter dated 1st August 1995. This letter clearly shows that the petitioners had forwarded five cheques which were all dated blank. They were drawn on Canara Bank in favour of original complainant. The details of these cheques are mentioned in this letter. He has also invited my attention to letter dated 25th January 1996 and has pointed out that the said letter records, forwarding of post dated new cheques. In such circumstances, the complaint alleging dishonour of the cheques which have been handed in as early as in 1995-96 did not disclose commission of any offence.

9. Another contention raised is that the complaint itself is filed in 1999 and, therefore,

in any event, could not have been entertained.

10. With regard to the second contention I have verified from photocopy of the complaint filed before the Metropolitan Magistrate and perusal thereof would show that the complaint is not filed in October 1999 as alleged but has been filed on 15th December 1998. Therefore, this contention would not survive. Both sides do not dispute that photocopy of the complaint produced before me mentions the date of filing as above.

11. As regards the first contention that the blank cheques were handed in in 1995/96 and, therefore, the complaint filed belatedly could not have been entertained, is concerned, in my view, apart from the fact that the said contention is raised for the first time before me, additionally, it would not be proper for me to entertain it in this petition. Petitioners will have to lay a proper foundation by producing

relevant materials including copies of the correspondence and get the contents proved and, thereafter, make appropriate submissions. By mere production of these letters before me, it is not as if the old cheques are made subject matter of the complaint. For all these aspects to be gone into, firstly, as pointed out above, a foundation will have to be laid and secondly appropriate submissions made. Such issues are always open and it would not be proper to hold that by mere issuance of process, the issue in any manner stands concluded.

12. In the above circumstances, I am not inclined to entertain these petitions. The learned Counsel has failed to point out any error apparent or perversity in the prima facie findings recorded by the Additional Sessions Judge. The order is based upon materials produced and on perusal of the complaint. As rightly held by me, the complaint read as a

whole, prima facie, discloses commission of offence punishable under the above provisions. Such prima facie observation would not in any manner prevent the petitioners from raising appropriate contentions including those raised before me. The same are expressly kept open.

13. With the above clarification, these petitions are dismissed. Ad-interim order to stand vacated forthwith.

(S.C.Dharmadhikari, J)